

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAMUEL JONES, No. 364868,

Plaintiff,
v.

Civil No. 19-10916
Hon. Thomas L. Ludington

REGINA VASSEY, et al.,

Defendants.

**ORDER DENYING MOTION TO SET ASIDE JUDGMENT, DENYING APPLICATION
TO PROCEED WITHOUT PREPAYING FEES OR COSTS, AND DENYING LEAVE
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Plaintiff Samuel Jones, presently incarcerated at the Marquette Branch Prison, filed a pro se civil rights complaint that was dismissed because he did not timely correct his filing deficiency of failing to pay the filing fee or a properly prepared in forma pauperis application. ECF Nos. 1, 7. Plaintiff moves to set aside the dismissal by moving to proceed in forma pauperis. ECF No. 9. Upon review of the complaint and Plaintiff's litigation history in the federal courts, his motion will be denied because he is a "three-striker" who may not proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g).

Plaintiff filed an application to proceed without prepayment of the filing fee, seeking to correct the filing deficiency that resulted in the summary dismissal of this action. The Prisoner Litigation Reform Act of 1995 (PLRA) states that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). *See also In Re Prison Litigation Reform Act*, 105 F. 3d 1131, 1138 (6th Cir. 1997). Prisoners may make an initial partial filing fee and pay the remainder in installments. *See Miller v. Campbell*, 108 F. Supp. 2d 960, 962 (W.D. Tenn. 2000); 28 U.S.C. § 1915(b).

Under the PLRA, however, a federal court may dismiss a case if on three or more previous occasions a federal court dismissed the incarcerated petitioner's action because it was "frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g); *Thaddeus-X v. Blatter*, 175 F. 3d 378, 400 (6th Cir. 1999). The "three strikes" provision of the PLRA prohibits a prisoner who has had three prior suits dismissed for being frivolous from proceeding in forma pauperis in a civil rights suit absent an allegation that the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g); see *Clemons v. Young*, 240 F. Supp. 2d 639, 641 (E.D. Mich. 2003).

Plaintiff has been an active litigant in the federal courts in Michigan. In more than three of Plaintiff's lawsuits, the Court entered dismissals on the grounds that the cases were frivolous, malicious, or failed to state a claim. See *Jones v. Huss et al.*, No. 2:19-cv-88, 2019 U.S. Dist. LEXIS 110768 (W.D. Mich. July 2, 2019) ("Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Petitioner's complaint will be dismissed for failure to state a claim."); *Jones v. Bauman et al.*, No. 2:18-cv-181, 2018 U.S. Dist. LEXIS 203139 (W.D. Mich. Nov. 30, 2018) (dismissing some defendants due to misjoinder of parties and dismissing the case for remaining defendant for failure to state a claim); *Jones v. MDOC Ct. Order Processing Staff*, No. 2:18-cv-13605, 2018 U.S. Dist. LEXIS 202125 (E.D. Mich. Nov. 29, 2018) (dismissed for failure to state a claim); *Jones v. Koval*, No. 2:19-cv-168, 2019 U.S. Dist. LEXIS 155742 (W.D. Mich. Sept. 12, 2019) (dismissed because Plaintiff was not eligible to proceed in forma pauperis).

In this case, Plaintiff does not allege that he is in imminent danger of serious physical injury. Plaintiff has had more than three prior cases dismissed being frivolous, malicious, or failing to state a claim. Accordingly, 1915(g) bars him from filing in forma pauperis. Additionally, any

appeal from this dismissal would not be in good faith. Therefore, Plaintiff may not appeal this decision in forma pauperis. *See Drummer v. Luttrell*, 75 F. Supp. 2d 796, 805–06 (W.D. Tenn. 1999).

Accordingly, it is **ORDERED** that the Plaintiff's motion to set aside judgment, ECF No. 9, is **DENIED**. The complaint is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(g).

It is further **ORDERED** that Plaintiff's application to proceed without prepaying fees or costs, ECF No. 10, is **DENIED**.

It is further **ORDERED AND CERTIFIED** that any appeal taken by Plaintiff would not be done in good faith and permission for leave to appeal in forma pauperis is **DENIED**.

Dated: February 13, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

<p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon Samuel Jones #364868, MARQUETTE BRANCH PRISON, 1960 U.S. HWY 41 SOUTH, MARQUETTE, MI 49855 by first class U.S. mail on February 13, 2020.</p> <p style="text-align: right;"><u>s/Kelly Winslow</u> KELLY WINSLOW, Case Manager</p>
